

**United States Department of Labor
Employees' Compensation Appeals Board**

A.B., Appellant

and

**U.S. POSTAL SERVICE, SOUTHWEST
CARRIER ANNEX, Chicago, IL, Employer**

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**Docket No. 11-1237
Issued: December 5, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 26, 2011 appellant, through his attorney, filed a timely appeal of the March 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established a left knee injury in the performance of duty on March 1, 2010, as alleged.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 12, 2010 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 1, 2010 he sustained a left knee injury when he fell while descending steps. In a narrative statement dated August 12, 2010, he related that he slipped on ice while coming down steps. Appellant sought medical treatment on March 3, 2010 for his swollen left knee.

On the reverse of the Form CA-1, the employing establishment stated that appellant was in the performance of duty at the time of the March 1, 2010 incident.

In a May 22, 2010 report, Dr. Amaar Malik, a radiologist, stated that a magnetic resonance imaging (MRI) scan of appellant's left knee showed moderate to large knee joint effusion. There was also evidence of osteoarthritis within the patellofemoral and medial femoral tibial compartments with an associated degenerative tear of the posterior horn of the medial meniscus.

A July 26, 2010 report from Edward Medical Group contained an illegible signature and stated that appellant had been treated for left knee pain since March 3, 2010. His preoperative office visits were related to left knee surgery.

Postoperative left knee arthroscopic discharge instructions dated July 28, 2010 and signed by a registered nurse and Dr. David M. Burt, a Board-certified orthopedic surgeon, addressed appellant's physical therapy.

In an August 24, 2010 form report, Dr. Zaid W. Jabbar, a Board-certified internist, listed March 3, 2010 as the date of injury. He obtained a history that appellant fell down while delivering mail at work one week prior to March 3, 2010. Dr. Jabbar advised that he had a left knee meniscus tear. He indicated with an affirmative mark that the diagnosed condition was caused or aggravated by an employment activity. It was undetermined as to when appellant could return to work.

By letter dated September 2, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence, including a rationalized medical opinion from an attending physician which described a history of injury and provided dates of examination and treatment, findings, test results, a diagnosis together with medical reasons on why the diagnosed condition was caused or aggravated by the March 1, 2010 incident.

In an undated form report, Dr. Burt provided a history that on March 10, 2010 appellant fell down stairs at work. He diagnosed left knee medial meniscus tear and indicated with an affirmative mark that the diagnosed condition was caused or aggravated by an employment activity. In an operative report dated July 28, 2010, Dr. Burt indicated that he had performed arthroscopic partial medial meniscectomy and chondroplasty of the patella, trochlea and medial femoral condyle to repair appellant's left knee medial meniscus tear. In reports dated September 7, 2010, Dr. Burt noted appellant's July 28, 2010 left knee surgery. He advised that appellant was totally disabled for work and listed his physical restrictions.

A report from a physical therapist addressed appellant's medical treatment on September 7, 2010.

In an October 15, 2010 decision, OWCP denied appellant's claim, finding that the evidence was sufficient to establish that the March 1, 2010 incident occurred as alleged, but the medical evidence was insufficient to establish an injury causally related to the accepted employment incident.

By letter dated October 21, 2010 appellant, through his attorney, requested a telephone hearing.

In a July 22, 2010 report, Dr. Burt noted appellant's complaint of worsening left knee pain. He obtained a history of the March 1, 2010 employment incident. Dr. Burt listed his findings on physical examination of the left knee and reviewed MRI scan results. He diagnosed a medial meniscus tear and recommended arthroscopic surgery.

Appellant submitted anesthesia records for his left knee surgery.

In a decision dated March 25, 2011, an OWCP hearing representative affirmed the October 15, 2010 decision. He found that the medical evidence was insufficient to establish that appellant sustained a left knee injury causally related to the accepted March 1, 2010 employment incident.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee

² Following the issuance of the March 25, 2011 OWCP decision, OWCP received additional evidence. However, the Board cannot consider evidence that was not before OWCP at the time of the final decision. See 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

actually experienced the employment incident or exposure, which is alleged to have occurred.⁶ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

ANALYSIS

OWCP accepted that appellant fell down steps on March 1, 2010 while working as a city carrier. The Board finds that the medical evidence of record is insufficient to establish that his left knee condition was caused or aggravated by the March 1, 2010 employment incident.

In an undated form report, Dr. Burt provided a history that on March 10, 2010 appellant fell down stairs at work. The Board notes that the accepted incident occurred on March 1, 2010 and not March 10, 2010. Moreover, Dr. Burt's opinion on causal relationship solely consisted of a "yes" checkmark in response to a question regarding whether appellant's left knee meniscus tear was employment related. The Board finds that his report is of diminished probative value because he failed to provide medical rationale explaining how falling down steps caused the injury.¹¹ A checkmark response, without further explanation or rationale, is insufficient to meet this standard.¹² None of Dr. Burt's other reports provided a medical opinion addressing the causal relationship between appellant's left knee condition and the accepted employment incident. He merely addressed his postoperative medical treatment, physical restrictions and total disability. Medical evidence which does not offer any opinion regarding the cause of an

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁷ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(eel), 10.5(q) (traumatic injury and occupational disease defined).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Charles E. Evans*, 48 ECAB 692 (1997).

¹¹ See *Gloria J. McPherson*, 51 ECAB 441 (2000) (the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant).

¹² See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

employee's condition is of limited probative value.¹³ For the stated reasons, the Board finds that Dr. Burt's reports are insufficient to establish appellant's claim.

The Board finds that Dr. Jabber's August 24, 2010 form report provided an inconsistent and inaccurate history of injury, stating that March 3, 2010 was the date of injury and then stating that appellant fell down while delivering mail at work one week prior to March 3, 2010. In addition, the accepted employment incident occurred on March 1, 2010 rather than March 3, 2010. The Board further finds that Dr. Jabber's opinion on causal relation is of diminished probative value. While he indicated with a checkmark that appellant's left knee meniscus tear was employment related, he failed to provide any medical rationale explaining how falling down steps caused the injury.¹⁴ As stated, a checkmark response, without further explanation or rationale, is insufficient to meet this standard.¹⁵ The Board finds that Dr. Jabber's report is insufficient to meet appellant's burden of proof.

The May 22, 2010 diagnostic test results of Dr. Malik did not provide a medical opinion addressing whether the diagnosed left knee conditions were causally related to the March 1, 2010 employment incident. Similarly, the anesthesia records related to appellant's left knee surgery did not provide an opinion on causal relation. The Board finds, therefore, that Dr. Malik's report and the hospital records are insufficient to establish appellant's claim.¹⁶

The July 26, 2010 report from Edward Medical Group which contained an illegible signature has no probative value, as it is not established that the author is a physician.¹⁷

The September 7, 2010 report signed by a physical therapist cannot constitute competent medical evidence as a physical therapist is not a "physician" as defined under FECA.¹⁸

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left knee injury causally related to the accepted March 1, 2010 employment incident. He did not meet his burden of proof.

On appeal, appellant's attorney contended that OWCP's decision is contrary to fact and law. For reasons stated above, the Board finds that appellant did not submit sufficient evidence establishing that he sustained an injury due to the accepted March 1, 2010 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹³ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁴ See *Gloria J. McPherson*, *supra* note 11.

¹⁵ See cases cited *supra* note 12.

¹⁶ See cases cited *supra* note 13.

¹⁷ See *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁸ See 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a left knee injury in the performance of duty on March 1, 2010, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board